UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,846	10/17/2003	**Yelena Nabutovsky**	A03P3002-US1	9561

24473 7590 10/27/2010

STEVEN M MITCHELL
PACESETTER INC
701 EAST EVELYN AVENUE
SUNNYVALE, CA 94086

EXAMINER	
FLORY, CHRISTOPHER A	
ART UNIT	**PAPER NUMBER**
3762	

MAIL DATE	DELIVERY MODE
10/27/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YELENA NABUTOVSKY

Appeal 2009-004638
Application 10/687,846
Technology Center 3700

Before: JENNIFER D. BAHR, JOHN C. KERINS, and KEN B. BARRETT, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL[1]

---

[1]The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Yelena Nabutovsky (Appellant) appeals under 35 U.S.C. § 134 (2002) from the Examiner's decision rejecting claims 1-28 under 35 U.S.C. § 102(b) as anticipated by Stoop (US 6,370,431 B1, iss. Apr. 9, 2002). We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

Claim 1 is representative of the claimed invention:

1. A method of detecting and preventing ventricular arrhythmias, comprising:

a. detecting at least two premature ventricular contractions (PVCs);

b. determining a difference between morphologies of the at least two PVCs;

c. comparing said difference to a predetermined morphology threshold; and

d. determining whether to deliver preventive therapy based on said comparing step.

SUMMARY OF DECISION

We REVERSE.

OPINION

The Examiner found that claims 1-28 are anticipated by Stoop. With respect to the method claims 1-12 and 23-28, the Examiner found, in relevant part, that Stoop describes a method having steps of "detecting at least two PVCs, determining a difference between their morphologies, and comparing said morphology difference to a predetermined threshold to determine whether to deliver preventative therapy (column 2, lines 10-50)." Ans. 3. With respect to apparatus claims 13-22, the Examiner found, in

relevant part, that Stoop describes an apparatus with a comparing means. Ans. 5.

Appellant argues claims 1-28 as a group. Appeal Br. 13. Appellant's arguments pertain to the "comparing" elements of the claims. Appeal Br. 14-17. Thus, the issue presented in this appeal is whether the Examiner has demonstrated that Stoop describes a method and/or apparatus having a step of comparing and/or a comparing means or circuit, as recited in claims 1-28.

With respect to the apparatus claims 13-22, the Examiner has made no finding as to which components of Stoop describe the "comparing means" or "comparing circuit" of claims 13-22. Ans. 5 (noting no citations are provided with respect to this claim element). Thus, we reverse the Examiner's rejection of claims 13-22 for failing to provide the requisite factual basis to support a finding of anticipation. *See In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967) (the examiner has the initial duty of supplying the requisite factual basis and may not, because of doubts that the invention is patentable, resort to speculation, unfounded assumptions, or hindsight reconstruction to supply deficiencies in the factual basis).

With respect to method claims 1-12 and 23-28, the Examiner found that Stoop describes the comparing step at col. 2, ll. 10-50. In the claims, the comparing is between 1) a difference between morphologies of at least two PVCs and 2) a morphology threshold. While Stoop mentions the words "T-wave" and "morphology" in the portions cited by the Examiner, we do not find the series of steps required by the comparing step of the claims. The Examiner states that T-waves are part of a PVC and that "comparing the T-wave data from a current QT interval to a past mean value" reads on "comparing at least two PVCs." Ans. 5. Even if every PVC had a T-wave

and Stoop taught "comparing at least two PVCs," the claimed comparison step requires comparing a difference between the morphologies of at least two PVCs and a morphology threshold, not "comparing at least two PVCs." Thus, we reverse the Examiner's rejection of claims 1-12 and 23-28 for failing to demonstrate that each and every claimed element is expressly or inherently described in Stoop. *See, e.g., RCA Corp. v. Applied Digital Data Sys.*, Inc., 730 F.2d 1440, 1444 (Fed. Cir. 1984) ("Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention.").

DECISION

We reverse the Examiner's decision.

REVERSED

mls

STEVEN M MITCHELL
PACESETTER INC
701 EAST EVELYN AVENUE
SUNNYVALE, CA 94086